IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

SUNDAY, THE 5TH FEBRUARY 2006 / 16TH MAGHA, 1927

WP(C).No. 19375 of 2006(F)

OS.29/2006 of SUB COURT, PALA
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PETITIONER:

ALEXANDER, AGED 55 YEARS,
S/O.FRENCHU, CHOKKATTU HOUSE,
AIKOMBU KARA, VELLILPPALLI VILLAGE,
MEENACHIL TALUK, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:

JOSEPH AUGUSTINE,
S/O.AUGUSTINE, MURINGAYIL,
KIZHATHADIYOOR, LALAM VILLAGE,
MEENACHIL TALUK, KOTTAYAM.

BY ADV. SRI.M.C.CHERIAN
SMT.SARAMMA CHERIAN
SRI.M.A.THOMAS KUTTY
SMT.ASHA CHERIAN
SRI.P.M.SANEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON 05/02/2006 DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the plaint in O.S. No.29/06 of the Sub Court, Pala.

Ext.P2:- True copy of the IA No.427/2006 in OS No.29/2006 on the file of the Sub Court, Pala.

Ext.P3:- True copy of the order of the Sub Court, Pala, in I.A.No.427/2006 in OS No.29/2006.

Ext.P4:- True copy of the schedule of property attached as per Ext.P3.

Ext.P5:- True copy of the affidavit and petition in I.A.No.709/2006 in OS No.29/2006.

Ext.P6:- True copy of the objection filed by the respondent in Ext.P5.

Ext.P7:- True copy of the order of the Sub Judge, Pala in IA No.709/2006 in O.S.No.29/2006.

Ext.P8:- True copy of the valuation certificate issued by the approved valuer.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.19375 OF 2006

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Dated this the 5th day of February, 2007

JUDGMENT

Petitioner is the defendant and respondent the plaintiff in O.S.29/06 on the file of Sub Court,Pala. Suit is filed for realisation of Rs.2,07,226/- being the advance amount paid by respondent to petitioner under an agreement for sale. Along with the suit, respondent filed I.A.427/06 an application under Order 38 Rule 5 of Code of Civil Procedure to attach the immovable property of petitioner. Under Ext.P3 order an order of conditional attachment was passed. Petitioner filed I.A.709/06 before court below to restrict the order of attachment to an area for which agreement for sale was executed. Learned Sub Judge passed Ext.P7 order directing petitioner to produce fixed deposit receipt of Rs.2 lakhs to vacate the order. This petition is filed under Article 227 of Constitution of India to quash

Ext.P7 order and to direct learned Sub Judge to decide how much portion of the attached property is necessary for the security of the plaint claim.

2.Learned counsel appearing for petitioner and respondent were heard.

3. Learned counsel appearing for petitioner pointed out that under Ext.P3 order an extent of 5 hectares and 65 Ares and 5 square meter was attached and as per Ext.P8 valuation, its value would come to Rs.1,41,25,000/- and therefore learned Sub Judge is to be directed to conduct an enquiry and to limit the order of attachment to the extent of the property necessary for the security of plaint claim. Learned counsel appearing for respondent pointed out that property covered by agreement for sale was mortgaged by petitioner without the knowledge of respondent and therefore that property cannot be treated as sufficient security and therefore there is no reason to interfere with Ext.P7 order.

3. The grievance of petitioner is that for

the plaint claim of less than 2 ½ lakhs, property worth more than one crore was attached by the court and the attachment has to be limited to the extent of the property which is necessary to realise the plaint claim. There is force in the submission. Learned Sub Judge is directed to consider the extent of property which is necessary for the security of plaint claim and to restrict the order of attachment to that extent of the property. Parties are at liberty to adduce evidence.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006